

## **REMARKS**

### **I. Status of the Claims**

Claims 1-4, 10-17, 78, and 80-81 are pending in the instant application after this Amendment. Through this amendment claims 6, 7, 8, 9, 82 and 85 have been cancelled and claim 81 has been amended. Claim 1 is independent. The cancellation of claims 6, 7, 8, 9, 82 and 85 is solely in order to reduce the number of issues before the Examiner and to simplify prosecution, and should not be viewed as an estoppel of the subject matter of those claims. Applicant reserves the right to later pursue the subject matter of the canceled claims and other claims in a related continuing application.

### **II. Summary of Examiner Interview**

Applicant thanks the Examiner for the courtesies extended during the personal interview conducted on July 26, 2007 (the "Interview") in which the Examiner, Applicant and Applicant's representatives discussed REL and other potential prior art methods. It is Applicant's understanding that the amendments previously made differentiate the present invention from REL and overcome the rejections based thereon.

During the Interview, the Examiner identified two methods that he asked Applicant to consider despite not having formally cited prior art disclosing such methods. These two methods were 1) a "Key-Money" or "Goodwill" arrangement, and 2) a "Fixer-Upper" arrangement. Although neither of these methods nor any references showing these methods are part of the record and Applicant has not uncovered any references that would indicate that either of these methods are prior art to the present invention, in the interest of avoiding unnecessarily prolonging prosecution, Applicant respectfully submits that even if each of these methods were

prior art, they would neither anticipate nor render obvious the present invention, either alone or in combination with each other or other prior art of record.

### III. Applicant's Arguments

#### a) Key-Money or Goodwill Arrangement

As explained by the Examiner, a "Key-Money" or "Goodwill" arrangement is where an owner of a piece of property pays a tenant money to purchase an undervalued lease of the property. In that situation, the tenant receives a payment from the owner to vacate the apartment or home so that it can be sold or transferred to another tenant at a higher rent. Alternatively, the current tenant receives money from a potential new tenant to assign the below-market value lease to such new tenant. Although it has not been established that a Goodwill arrangement is prior art to the present invention, Applicant nevertheless submits that such arrangement fails to teach or suggest the claimed invention.

Claim 1 recites:

*the real estate agent receiving from the seller the real estate listing for the property in return for providing an up-front monetary payment to the seller... the real estate agent receiving consideration from the seller if the sale condition is met during the defined period of time.*

Each of these elements is not present in a Goodwill arrangement. First, there is no money going from a real estate agent to the seller in exchange for a listing; rather, the money goes from an owner of the property (e.g., landlord or seller) to a tenant to vacate the property so that it can be sold or leased to a new tenant. In the claim, the seller/owner receives money, whereas in the Goodwill arrangement, the seller/owner pays money. Second, in the Goodwill arrangement there is no consideration going from a seller to a real estate agent "if the sale condition is met during a defined period of time"; rather, the only payment taking place in a

Goodwill arrangement is going from the seller/owner or potential new tenant to the current tenant of the property to induce such tenant to vacate the property. Furthermore, claim 1 requires the same entity (i.e., the seller) to receive money and also to give consideration. In contrast, in a Goodwill arrangement, the person receiving the payment—the old tenant—does not also give consideration.

Even if the potential new tenant were making a payment to the current tenant to purchase or take-over the lease, no payment would be made to the seller/owner of the property, as in the claim, and moreover, such money is not in return for the right to list the property. Furthermore, in the claim, the person receiving the up-front payment—the seller—provides consideration (to the real estate agent). In contrast, where a potential new tenant purchases the lease, the person receiving the money—the existing tenant—does not provide further consideration to any of the other parties.

Thus, Applicant respectfully submits that claim 1 is patentable over a Goodwill arrangement even if such an arrangement can be deemed to be prior art.

b) Fixer-Upper Arrangement

As explained by the Examiner, a Fixer-Upper arrangement is where a real estate agent offers to fix-up or renovate a seller's home, at the real estate agent's cost, prior to putting the home up for sale. In exchange for the cost incurred by the real estate agent to renovate the house, the real estate agent receives a portion of the proceeds from the sale of the home.

As an initial matter, Applicant is unaware of any such arrangement being used or described publicly. Although it has not been established that a Fixer-Upper arrangement is prior art to the present invention, Applicant nevertheless submits that such an arrangement fails to teach or suggest the present invention.

Claim 1 recites:

the real estate agent receiving from the seller the real estate listing for the property in return for providing *an up-front monetary payment to the seller*; the real estate agent providing *the up-front monetary payment to the seller* at the time the real estate agent receives the listing from the seller, and wherein the seller retains the up-front monetary payment received from the real estate agent *if a sale condition for the property is not met during a defined period of time*; and the real estate agent receiving consideration from the seller *if the sale condition is met during the defined period of time*.

In the Fixer-Upper arrangement, no up-front *monetary* payment is provided to the seller in return for receiving the listing; rather, the real estate agent merely invests in the property itself and does not provide any payment to the seller. In such an arrangement there is a cost to the realtor, but no monetary payment at all to the seller. In fact, any monetary consideration that the seller would get from the real estate agent's renovations would be at the time that the sale occurs and only if the house sells for more money than it would have originally sold for, less any extra percentage taken in return for fixing the property by the real estate agent. Thus, no up-front monetary benefit is given to the seller at the time the agent receives the listing.

To the extent the Examiner considers the improvements to the seller's property as corresponding to the claimed up-front payment, the improvements do not teach or suggest the further claim limitation that "the seller retains the up-front monetary payment . . . if a sale condition for the property is not met during a defined period of time". In the Fixer-Upper arrangement, there is no such sale condition or time period associated with the seller retaining the benefit of the improvements made to the property.

Thus, Applicant respectfully submits that claim 1 is patentable over a Fixer-Upper arrangement even if such an arrangement can be deemed to be prior art.

Claim 1 is also patentable over the Goodwill arrangement and the Fixer-Upper arrangement taken in combination with each other or with any of the other prior art of record because none of these arrangements teaches or suggests a real estate agent receiving a real estate listing in return for an up-front monetary payment to the seller provided at the time the real estate agent receives the listing from the seller, wherein the seller retains the up-front monetary payment if a sale condition for the property is not met during a defined period of time; and the real estate agent receiving consideration from the seller if the sale condition is met during the defined period of time.

**CONCLUSION**

No fees are believed to be due in connection with the filing of this paper. Nevertheless, should any fee(s) be deemed now or hereafter due, the Commissioner is authorized to charge all such fees to Deposit Account No. 19-4709.

In the event that there are any questions, or should additional information be required, please contact Applicant's attorney at the number listed below

Respectfully submitted,

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